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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,162	10/16/2003	Robert D. Harty	0006/01146	6814

27197 7590 02/22/2006

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EXAMINER	
PATEL, TAJASH D	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/687,162	ROBERT HARTY	
	Examiner	Art Unit	
	Tejash D. Patel	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 7-20* is/are rejected.

7)☒ Claim(s) *6* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Lipton (US 4,891,501). Lipton discloses a protective neck device including a first impact resistant pliable arcuate substrate adapted to encircle the neck and lower cranium with adjustable straps (114) having hook and loop material that extends from the substrate and worn about the neck as shown in figures 1, 3 and 6. Further, the device has a second underlaying substrate that is integrally molded to the first substrate with cold/hot packs being positioned therebetween, col. 3, line 1 – col. 4, line 66. Further, a rigid planar substrate is attached to the device, col. 3, lines 10-12.

The recitation "during physical activities" has not been given patentable weight since this intended use language does not positively limit the metes and bounds of the patent protection desired.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 7- 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipton. With regard to claims 7 and 9-15, it would have been obvious to one skilled in the device of Lipton having cold/hot packs are deformable and filled with fluid as known in the art that has a means (308) to regulate flow through the substrate as shown in figure 9. Further, it is obvious that the neck device of Lipton extends to a region below the person's seventh vertebra as shown in figure 14.

With regard to claim 8, it would have been obvious that the straps of Lipton can be be made of any desired material that was available at the time the device was made.

Furthermore, the first, second and third substrates (16,20,22) of Lipton can be made of any desired weight, density, etc as required for a particular application or end use thereof.

5. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipton in view of Hujar et al (US 5,557,807). Lipton discloses the invention as set forth above except for showing means of attaching the neck device to a helmet.

Hujar et al (hereinafter Hujar) discloses a helmet with cooling means having a neck protector that is integrally molded thereto as shown in figure 3.

It would have been obvious to one skilled in the art at the time the invention was made to position the neck device of Lipton which is reversibly worn on the head as shown in figure 4 by attaching the device to a helmet as taught by Hujar, an alternative but equivalent means of securing the device about the head in order to keep the user comfortable or depending on the end user thereof.

Response to Amendment

6. The amendment and arguments filed on November 30, 2005 has been considered. In view of such claim 6 has been objected to as being allowable. However, the amended recitation "during physical activities" in claims 1 and 16 does not structurally overcome the prior art of Lipton'501 but merely defines an intended use. Therefore, this office action is being made FINAL.

Allowable Subject Matter

7. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993.

TEJASH PATEL
PRIMARY EXAMINER

February 17, 2006